Via Facsimile: (703) 872-9327

9D-DW-19324-CIP
PATENT

REMARKS

The Office Action mailed August 6, 2003 has been carefully reviewed and the foregoing amendment has been made in consequence thereof.

Claims 1-19 are now pending in this application. Claims 11-15 and 19 are allowed. Claims 1-10 and 16-18 stand rejected.

The rejection of Claims 6-10 and 16-18 under 35 U.S.C. § 102(b) as being anticipated by Rop (U.S. Patent No. 2,948,560) is respectfully traversed.

Rop describes a latch mechanism for a household refrigerator. A keeper (11) is rigidly secured to a refrigerator cabinet for engagement and disengagement of a pivotally mounted latch bolt (14). The latch bolt includes a keeper engaging roller (16), a base portion (17), and a resiliently flexible portion (18) extending therebetween. The latch bolt base portion includes a slot (19) that receives a pin (24) of a handle (20). The handle rotates about a pivot pin (21), and as the handle is rotated, movement of the pivot pin in slot of the latch bolt base portion causes the flexible portion of the latch bolt to rotate and engage or disengage the keeper engaging roller from the rigid keeper mounted to the refrigerator cabinet. Rop col. 3, lines 19 to col. 4, line 35.

Claim 6 recites a dishwasher door latch assembly that includes "a door comprising a door retainer projection and a rounded hooded portion...a resilient keeper coupled to the dishwasher...a latch handle pivotally mounted to said door beneath said rounded hooded portion, said latch handle configured to rotate about a first longitudinal axis...."

Rop does not describe nor suggest a dishwasher door latch assembly that includes a door including a door retainer projection and a rounded hooded portion, a resilient keeper coupled to the dishwasher, and a latch handle pivotally mounted to said door beneath said rounded hooded portion, said latch handle configured to rotate about a first longitudinal axis. For at least the reasons set forth above, Applicants respectfully submit that Claim 6 is patentable over Rop.

Claims 5-10 depend from independent Claim 6. When the recitations of Claims 5-10 are considered in combination with the recitations of Claim 6, Applicants submit that dependent Claims 5-10 likewise are patentable over Rop.

Claim 16 recites a dishwasher door assembly that includes "an escutcheon comprising a latch portion and a rounded hooded portion...a latch handle pivotally mounted to said escutcheon beneath said rounded hooded portion about a first longitudinal axis...."

Rop does not describe nor suggest a dishwasher door assembly that includes an escutcheon including a latch portion and a rounded hooded portion, a latch handle pivotally mounted to the escutcheon beneath the rounded hooded portion about a first longitudinal axis. For at least the reasons set forth above, Applicants respectfully submit that Claim 16 is patentable over Rop.

Claims 17 and 18 depend from independent Claim 16. When the recitations of Claims 17 and 18 are considered in combination with the recitations of Claim 16, Applicants submit that dependent Claims 17 and 18 likewise are patentable over Rop.

For the reasons set forth above, Applicants respectfully request that the Section 102 rejection of Claims 6-10 and 16-18 be withdrawn.

The rejection of Claims 1-5 under 35 U.S.C. § 103 as being unpatentable over Rop (U.S. Patent No. 2,948,560) in view of Marks et al. ("Marks") (U.S. Patent No. 4,776,620) is respectfully traversed.

Rob is described above. Marks describes a door latching mechanism (30) for a dishwasher door (16). The inside of door has a frame (32) fixedly secured to the door for supporting a switch (34) and a bolt (36). The frame (32) defines an upwardly opening pocket (38) which closely and fixedly accepts the switch that is activated by depressing an actuator button (46) downward. The bolt has an enlarged head (48) extending upwardly from an elongate leg (50) on the frame which resides closely, guidingly against an edge (58) on the actuator button. A strike plate (60) is carried in cantilever fashion by a frame element and projects forwardly of a front edge of a tub (29). The strike plate has a forward latching portion (68) which engages the bolt. When the door is closed, the bolt projects through a rectangular cut-out (110) on the strike plate and allows latching, at the same time, a corner (108) of the strike plate bears directly on the actuator button so as to activate the same. Marks col. 2, line 32 to col. 3, line 48.

Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been an obvious to one of ordinary skill in the art to modify Rop according to the teachings of Marks. More specifically, it is respectfully submitted that a prima facie case of obviousness has not been established. As explained by the Federal Circuit, "to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant." In re Kotzab, 54 USPQ2d 1308, 1316 (Fed. Cir. 2000). MPEP 2143.01.

Moreover, the Federal Circuit has determined that:

> [I]t is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."

In re Fitch, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). Further, under Section 103, "it is impermissible . . . to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." In re Wesslau, 147 USPQ 391, 393 (CCPA 1965). Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion nor motivation to combine the cited art, nor any reasonable expectation of success has been shown.

Although it is asserted within the Office Action that Rop teaches the present invention except for disclosing the keeper is resilient, and that Marks discloses a resilient keeper, no motivation nor suggestion to combine the cited art has been shown. Since there is no teaching nor suggestion in the cited art for the claimed combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is

impermissible, and for this reason alone, Applicants request that the Section 103 rejection of Claims 1-5 be withdrawn.

Furthermore, Applicants respectfully submit that no motivation for the combination can be found within Rop and Marks, as Rop and Marks teach away from each other. Rop describes a rigid keeper mounted to a cabinet and interacting with a flexible bolt of the latch mechanism, but Rop does not describe nor suggest a handle pivotally mounted to the door beneath a rounded hooded portion or a resilient keeper that is engaged to a door retainer projection in the door. In contrast, Marks describes a resilient keeper and a rigid actuator.

If art "teaches away" from a claimed invention, such a teaching supports the nonobviousness of the invention. U.S. v. Adams, 148 USPQ 479 (1966); Gillette Co. v. S.C. Johnson & Son, Inc., 16 USPQ2d 1923, 1927 (Fed. Cir. 1990). In light of this standard, it is respectfully submitted that the cited art, as a whole, is not suggestive of the presently claimed invention. More specifically, Applicants respectfully submit that Marks teaches away from Stanley, and as such, there is no suggestion or motivation to combine Rop with Marks.

Further, and to the extent understood, no combination of Rop and Marks, describes or suggests the claimed combination, and as such, the presently pending claims are patentably distinguishable from the cited combination. Specifically, Claim 1 recites a door latch assembly for a door including a door retainer projection and a rounded hooded portion, wherein the door latch assembly includes "a handle pivotally mounted to the door beneath the rounded hooded portion, said handle configure to rotate about a first longitudinal axis...a latch actuator rotationally coupled to said handle and pivotally coupled to the door said latch actuator configured to rotate about a second longitudinal axis, said handle rotating in a first direction when actuated and said latch actuator rotating in a second direction opposite the first direction...and a resilient keeper engaged to the door retainer projection in a closed position, said latch actuator configured to disengage said keeper from the door retainer projection when said handle is actuated."

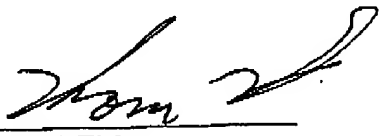
Neither Rop nor Marks, considered alone or in combination, describe or suggest a door latch assembly for a door including a door retainer projection and a rounded hooded portion, wherein the door latch assembly includes a handle pivotally mounted to the door beneath the

rounded hooded portion and a resilient keeper engaged to the door retainer projection in a closed position. Rather, Rop and Marks appear to teach away from the present invention and each other. More specifically, Rop describes a rigid keeper mounted to a cabinet and interacting with a flexible bolt of the latch mechanism, but Rop does not describe nor suggest a handle pivotally mounted to the door beneath a rounded hooded portion or a resilient keeper that is engaged to the door retainer projection in the door. Marks describes a resilient keeper and a rigid actuator. For at least the reasons set forth above, Applicants respectfully submit that Claim 1 is patentable over Rop in view of Marks.

Claims 2-5 depend from independent Claim 1. When the recitations of Claims 2-5 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 2-5 likewise are patentable over Rop in view of Marks.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



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